

SPENCER FANE

BRITT & BROWNE LLP

ATTORNEYS & COUNSELORS AT LAW

181510  
S.A.

MICHAEL L. MCCANN  
DIRECT DIAL: (816) 292-8110  
mmccann@spencerfane.com

File No. 1273100-33

RECEIVED

AUG 24 2006

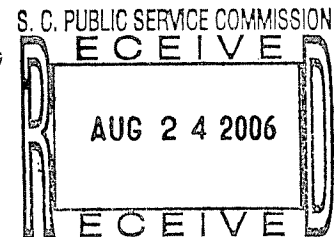
August 22, 2006

PSC SC  
DOCKETING DEPT.

**Certified Mail – Return Receipt Requested  
(7005 0390 0003 5644 7799)**

Mr. Charles L.A. Terreni  
Chief Clerk & Administrator  
Public Service Commission of South Carolina  
Post Office Drawer 11649  
Columbia, SC 29211

8/24/06  
tod



**Re: Dan Dennis d/b/a Dennis Corporation  
Docket No. 2006-239-C**

Dear Mr. Terreni:

My firm represents Birch Telecom, Inc. ("Birch Telecom") and its subsidiaries (collectively with Birch Telecom, "Birch Debtors"). I am writing with respect to the action commenced by Dan Dennis d/b/a Dennis Corporation ("Dennis") against Birch Telecom of the South, Inc. ("Birch of the South," a subsidiary of Birch Telecom) before the Public Service Commission of South Carolina, Docket No. 2006-239-C (the "Action").

On August 12, 2005, the Birch Debtors filed petitions under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). The Birch Debtors filed the Third Amended Joint Reorganization Plan of Birch Telecom, Inc., and Its Subsidiaries (the "Plan") on February 15, 2006. On March 20, 2006 (the "Confirmation Date"), the Bankruptcy Court entered an order confirming the Plan (the "Confirmation Order") and the Plan went effective on April 13, 2006 (the "Consummation Date"). A copy of the Plan and Confirmation Order are attached.

The Plan established the treatment with respect to all claims against the Birch Debtors existing as of the Confirmation Date. Additionally, the Plan contained the following discharge provisions.

Except as otherwise provided in the Plan or in the Confirmation Order, the rights afforded under the Plan and the Treatment of

RETURN DATE: \_\_\_\_\_  
SERVICE: \_\_\_\_\_

1000 Walnut Street, Suite 1400  
Kansas City, Missouri 64106-2140  
(816) 474-8100 www.spencerfane.com Fax (816) 474-3216

WA 865623.1

Mr. Charles L.A. Terreni  
August 22, 2006  
Page 2

Claims<sup>1</sup> under the Plan shall be in exchange for, and in complete satisfaction, settlement, discharge and release of, all Claims, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims. Upon the Consummation Date, except as provided in the Plan or the Confirmation Order, (i) the Debtors, and each of them, shall be deemed discharged and released under section 1141(d)(1)(A) of the Bankruptcy Code from any and all Claims, including demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not (a) a Proof of Claim based upon such debt is filed or deemed filed under section 501 of the Bankruptcy Code, (b) a Claim based upon such debt is allowed under section 502 of the Bankruptcy Code, or (c) the holder of a Claim based upon such debt accepted the Plan, and (ii) all Interests of the holders of (a) Old Birch Series A Preferred Stock, (b) Old Birch Common Stock, (c) Old Subsidiary Equity, and (d) Other Equity Rights shall be determined.

As of the Confirmation Date, except as provided in the Plan or the Confirmation Order, all Persons shall be precluded from asserting against the Debtors or the Reorganized Debtors, any other or further claims, debts, rights, causes of action liabilities or equity interests relating to the Debtors based upon any act, omission, transaction or other activity of any nature that occurred prior to the Confirmation Date. In accordance with the foregoing, except as provided in the Plan or the Confirmation Order, the Confirmation Order shall be a judicial determination of discharge of all such Claims and other debts and liabilities against the Debtors and termination of Interests of the holder of Old Birch Series A Preferred Stock, Old Birch Common Stock, Old Subsidiary Equity and Other Equity Rights, pursuant to sections 524 and 1141 of the Bankruptcy Code, and such discharge shall void any judgment obtained against the Debtors at any time, to the extent that such judgment relates to a discharged Claim or terminated Interest.

The Plan also contained the following injunction provisions:

---

<sup>1</sup> Capitalized terms not otherwise defined herein have the meanings given to them in the Plan.

Mr. Charles L.A. Terreni  
August 22, 2006  
Page 3

Except as provided in the Plan or the Confirmation Order, as of the Confirmation Date, subject to the occurrence of the Consummation Date, all entities that have held, currently hold or may hold a Claim or other debt or liability that is discharged or an Interest or other right of an equity security holder that is terminated pursuant to the terms of the Plan are permanently enjoined from taking any of the following actions against the Debtors, the Reorganized Debtors, the Class 4 Creditor Trust, the Deficiency Claim Trust, the Plan Trust or their property on account of any such discharged Claims, debts or liabilities or terminated Interests or rights: (i) commencing or continuing, in any manner or in any place, any action or other proceeding, (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order; (ii) creating, perfecting or enforcing any lien or encumbrance; (iv) asserting a setoff (except to the extent such setoff is preserved under the Plan for a holder of an Allowed Class 3 Claim) or right of subrogation of any kind against any debt, liability or obligation due to the Debtors (only to the extent the claim underlying the right of subrogation was timely filed or deemed timely filed); and (v) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan.

As of the Consummation Date, all entities that have held, currently hold or may hold a Claim, defense, obligation, suit, judgment, demand, debt, right, cause of action or liability that is released pursuant to the Plan are permanently enjoined from taking any of the following actions on account of such released Claims, obligations, suits, judgments, demands, debtors, rights, causes of action or liabilities: (i) commencing or continuing, in any manner or in any place, any action or other proceeding; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order; (iii) creating, perfecting or enforcing any lien or encumbrance; (iv) asserting a setoff (except to the extent such setoff is preserved under the Plan for a holder of an Allowed Class 3 Claim) or right of subrogation of any kind against any debt, liability or obligation due to any released entity; and (v) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan.

(Plan at PLAN-68).

SPENCER FANE  
BRITT & BROWNE LLP  
ATTORNEYS & COUNSELORS AT LAW

Mr. Charles L.A. Terreni  
August 22, 2006  
Page 4

On August 7, 2006, Dennis filed the Action, asserting various claims relating to Birch of the South's services in the summer of 2005. These claims, to the extent they are valid, clearly existed as of the Confirmation Date and are discharged pursuant to the Birch Debtors' Plan. As such, the Action was filed in violation of the injunction provisions of the Plan. Accordingly, Birch Telecom requests that the Action be dismissed as having been filed in violation of the Plan.

Should you have any questions regarding the foregoing, please feel free to contact me at your convenience.

Very truly yours,



Michael L. McCann

MLM/drh  
Enclosures

cc/ Dan Dennis (w/encl.) (via Certified Mail – RRR – 7004 0750 0001 6333 7619)  
C. Lessie Hammonds (w/encl.) (via Certified Mail – RRR – 7004 0750 0001 6333 7602)